

REMARKS

Status of Claims

Claims 1-9, 11, 12, and 14-21 are pending. Claims 1-19 have been rejected. Claim 20 has been objected to as being dependent upon rejected base claims.

Claims 1-9, 11-12 and 14-20 have been amended to correct informalities in the claim language and to more clearly define the claimed subject matter. Claim 1 has been amended by incorporating all of the limitations of claims 10 and 13. Accordingly, claims 10 and 13 have been cancelled without prejudice. Claim 20 has been amended by incorporating all of the limitations of base claim 1. Claim 21 has been added to recite additional subject matter disclosed in the original specification that was not previously claimed. Support for the new claim may be found, for example, at paragraphs [0046], [0047] and [0079] of the present application.

Applicants note with appreciation the indication of allowability of claim 20 if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Objection to Specification

The Examiner objected to the title of the present application because it is not descriptive. Applicants respectfully submit that amendment made to the title overcomes this objection.

Objection to Claim

Claim 20 is objected to as being dependent upon rejected base claims. Applicants respectfully submit that amendments made to claim 20 overcome this objection.

Rejection under 35 U.S.C. §102

The Examiner rejected claims 1-19 under 35 U.S.C. §102(e) as being anticipated by Hasegawa et al. (US 2005/0269584). Applicants respectfully note that the prior reference Ueda et al. shown in the paragraphs 10-12 of the Office Action are supposed to mean Hasegawa et al. The Examiner also rejected claim 1, 2 and 6 under 35 U.S.C. §102(b) as being anticipated by Tsuda et al (US 2004/0051105). Applicants respectfully traverse these rejections.

First, Applicants respectfully submit that Hasegawa is not a proper prior art under 35 U.S.C. §102(e). Hasegawa was published on December 8, 2005 and filed in the U.S. on March 21, 2005 claiming foreign priority to Japanese Patent Application (JP 2004-170221) filed on June 8, 2004. Thus, the prior art date under 35 U.S.C. §102(e) of Hasegawa is March 21, 2005. On the other hand, the present application was filed as a PCT application having an international filing date of March 18, 2005, designating the U.S. and further claiming foreign priority to Japanese Patent Application of JP 2004-079873 filed on March 19, 2004. Since the PCT application date is earlier than the prior art date under 35 U.S.C. §102(e), Hasegawa is not an appropriate prior reference under 35 U.S.C. §102(e). Although Applicants believe showing the PCT filing date is sufficient to remove Hasegawa, the certified copy of English Translation of the prior application of JP 2004-079873 filed on March 19, 2004 is filed herewith for the Examiner's review. As such, it is respectfully requested that the Examiner withdraw the rejection under 35 U.S.C. §102(e) based on Hasegawa.

With regard to the rejections of claims 1, 2 and 6 based on Tsuda, Applicants respectfully submit that amendments made to these claims overcome the rejections.

First, Applicants respectfully submit that claim 1 has been amended by incorporating all of the limitations of claims 10 and 13.

Next, it is respectfully submitted that Tsuda discloses a semiconductor laser device but fails to disclose a light emitting diode, as recited by amended claim 1. Tsuda discloses a laser device in Figs. 7 and 13. In a laser device, the thickness of an AlGaN layer used, for example, as a clad layer, is larger than that of a light-emitting diode. Thus, an anti-cracking layer 703 is formed in the laser device to prevent cracks. In contrast, in a light-emitting diode using a GaN substrate as disclosed in the present application, there is no need to secure sufficient thickness of the AlGaN layer, and thus lattice-matching can be easily realized. Therefore, no anti-cracking layer is required.

Although Figs. 1, 4 and 15 of Tsuda show the structure of a light-emitting diode, no anti-cracking layer is formed. Furthermore, Tsuda neither teaches nor suggests forming an anti-cracking layer in a light-emitting diode. Since amended claim 1 recites a light-emitting diode, Tsuda fails to disclose the structure of light emitting diodes.

To anticipate, every element and limitation of the claimed subject matter must be found in a single prior art reference, arranged as in the claims. *Brown v. 3M*, 265 F.3d. 1349, 60 USPQ2d 1375 (Fed. Cir. 2001). At a minimum, the cited prior art does not disclose expressly or inherently the above recited limitations. Thus, Applicants respectfully request that the Examiner withdraw the rejection of claim 1. Since claims 2 and 6 depend upon claim 1, these claims are also allowable.

New Claim

Since claim 21 depends upon claim 1, this claim is allowable.

CONCLUSION

Having fully responded to all matters raised in the Office Action, Applicants submit that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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